

TITLE 23. WATERS
Division 1. Central Valley Flood Protection Board
Chapter 1. Organization, Powers and Standards
Article 2. Definitions and Delegations
and
Article 8. Standards

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Central Valley Flood Protection Board (Board) proposes to amend California Code of Regulations (CCR), Title 23, Division 1, Chapter 1, Article 2, Section 4 Definitions. The Board also proposes to amend CCR, Title 23, Division 1, Chapter 1, Article 8, Sections 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, and figures 8.01, 8.02, 8.03, 8.04, 8.05, 8.06, 8.07, 8.08, 8.09, 8.10 and 8.11. The Board also proposes to codify CCR, Title 23, Division 1, Chapter 1, Article 8, Section 139.

Public Hearing

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the comment period.

Written Comment Period

Interested parties may submit written comments relevant to the Board's proposed regulatory action by mail or electronically. The written comment period closes on **Monday, (January 11, 2021)**. Submit written comments to:

Jit Dua, Board Counsel
Central Valley Flood Protection Board
3310 El Camino Ave., Suite 170
Sacramento, CA 95821

Electronic Submittal of Comments: Any interested person, or her/his authorized representative, may submit comments by facsimile (FAX) at (916) 574-0682 or by email to:

Rulemaking@cvflood.ca.gov.

Authority and Reference

California Water Code (CWC) sections 8534, 8571, 8598, 8608, 8609, and 8710 authorize the Board to adopt regulations or rules as needed to carry out its legislatively mandated powers and duties relative to these proposed amendments and adoption.

CWC section 8534 specifies that the Board shall enforce on behalf of the State the erection, maintenance and protection of levees, embankments and channel rectification as will, in its judgment, best serve the interests of the State. The Proposed Rulemaking implements, interprets and makes specific CWC section 8534 governing the construction of flood control facilities and encroachments to the flood control system.

CWC 8571 authorizes the Board to adopt, amend, or repeal rules to promote the convenient, orderly and just conduct of the business of the Board. The Proposed Rulemaking implements, interprets and makes specific CWC section 8571 governing the adoption, amending, and repealing rules for the convenient, orderly and just conduct of the business of the Board.

CWC section 8598 (a) authorizes the Board to establish a standard for levee construction. The Proposed Rulemaking implements, interprets and makes specific CWC section 8598 governing the construction of flood control system levees.

CWC section 8608 specifies, in part, that the Board shall establish and enforce standards for the maintenance and operation of levees, channels, and other flood control works of an authorized project or an adopted plan, including but not limited to standards for encroachment construction. The Proposed Rulemaking implements, interprets and makes specific CWC section 8608 governing the construction of flood control facilities and encroachments to the flood control system.

CWC section 8609 specifies, in part, that the Board may “designate floodways throughout the Sacramento and San Joaquin Rivers drainage to control encroachments in, and to preserve the flow regimens of, floodways for the purpose of protecting public improvements, lives, land use values, and improvements created in reliance upon historical flood patterns.” The Proposed Rulemaking implements, interprets and makes specific CWC section 8609 governing the construction of flood control facilities and encroachments to the flood control system.

CWC section 8710 establishes that “[e]very plan of reclamation, flood control, drainage, improvement, dredging or work, that includes or contemplates the construction, enlargement, revetment or alteration of any levee, embankment, canal or other excavation in the bed of or along or near the banks of the Sacramento or San Joaquin River or any of their tributaries or connected therewith, or upon any land adjacent thereto, or within any of the overflow basins thereof, or upon any land susceptible to overflow therefrom, shall be approved by the board before construction is commenced.” The Proposed Rulemaking implements, interprets and makes specific CWC section 8710 governing the construction of flood control facilities and encroachments to the flood control system to be approved by the Board.

Forms

Economic and Fiscal Impact Statement (STD. 399), November 2019

Informative Digest / Policy Statement Overview

The Board is the State of California’s regulatory agency responsible for ensuring that appropriate standards are met for the design, construction, maintenance, and protection of the flood control system that protects life, property, and wildlife habitat in California’s vast and diverse Central Valley from the devastating effects of flooding. The Board issues encroachment permits and works with other agencies to improve the flood protection facilities, enforces removal of problematic encroachments, and keeps watch over the Central Valley’s continually improving flood management system. As one of its core functions, the Board issues permits

and oversees any alteration to the State-Federal flood control system within its jurisdictional authority. The Board sets standards for the design and construction of flood control facilities and encroachments with permit application review, approval, issuance, and verification of compliance with Title 23, Division 1, Article 8 Standards. The Board's technical regulations require updating for the Board to meet its mandate to protect, operate and maintain the State's flood control system within the Board's jurisdiction.

This rulemaking proposes to amend the California Code of Regulations, Title 23, Division 1, Chapter 1, Article 2, Section 4 and Article 8, Sections 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, and figures 8.01, 8.02, 8.03, 8.04, 8.05, 8.06, 8.07, 8.08, 8.09, 8.10 and 8.11. This rulemaking also proposes to codify California Code of Regulations, Title 23, Division 1, Chapter 1, Article 8, Section 139.

Amend CCR, Title 23, Division 1, Chapter 1, Article 2, Section 4 (Definitions).

Section 4 of CCR, Title 23, Division 1, Chapter 1, Article 2 sets forth definitions of terms of art and commonly used terms throughout CCR, Title 23, Division 1. This rulemaking proposes to amend this section to track and comport with the proposed amendments to CCR, Title 23, Division 1, Chapter 1, Article 8 standards, Sections 111 through 139, which sets forth the standards for the design and construction of encroachments, levees and other flood control works.

Amend CCR, Title 23, Division 1, Chapter 1, Article 8, Section 111 – 138 (Standards), Figures 8.01 – 8.11.

Sections 111 through 138 and Figures 8.01 – 8.11 sets forth technical standards that govern the design and construction of flood control facilities and encroachments, which impact the flood control works and floodways within the Board's jurisdiction. This rulemaking proposes to amend Sections 111 through 138 and Figures 8.01 – 8.11 to provide the applicants with the technical information needed to design flood control facilities and encroachments and prepare and submit applications to the Board for proposed work requiring a Board permit.

Adopt CCR, Title 23, Division 1, Chapter 1, Article 8, Section 139 (Standards).

Section 139 sets forth the technical standards that govern the design and construction of in-ground pools, which have the potential impact the flood control works and floodways within the Board's jurisdiction. This rulemaking proposes to codify Section 139, to provide the applicants with the technical information needed to design in-ground pools and prepare and submit applications to the Board for proposed work requiring a Board permit.

Anticipated Benefits of the Proposed Regulations

The Board's existing regulations governing technical standards have not been amended since 1996. The proposed regulations are necessary to specify the information required to be submitted to the Board to determine the acceptability of proposed work or encroachments, to specify acceptable engineering methods for developing that information, and to set engineering standards that are consistent with modern engineering requirements.

Adoption and implementation of this proposed action will establish standards consistent with improvements in engineering standards for proposed work to avoid impacts to the flood carrying capacity of rivers and regulated streams and maintain the integrity of flood control project

features. Levees are the most prevalent flood control project feature throughout the Board's jurisdiction and their failure can result in devastating losses of life and infrastructure. Likewise, encroachments to the flood control system also have the potential to interfere with operation, maintenance, and flood fighting capabilities along stream channels, levees, and other flood control project features. Updated technical standards are needed to avoid such interference.

Substantial Differences from Existing, Comparable Federal Regulations or Statutes

There are no comparable regulations in the federal Code of Regulations that address the specific subject addressed by the proposed regulations.

Evaluation of Inconsistency or Incompatibility with Existing State Regulations

Pursuant to Government Code Section 11346.5(a)(3)(D), the Board evaluated the proposed regulations to determine whether they are inconsistent or incompatible with existing state regulations and concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Mandated by Federal Law or Regulations

The proposed regulations are not mandated by federal law or regulations, nor is it identical to previously adopted or amended federal regulations.

Other Statutory Requirements

There are no other applicable matters prescribed in state statutes or regulations specific to the Board that affect or would be affected by the proposed regulations.

Disclosures Regarding Proposed Action

The Board has made the following initial determinations:

Mandates on Local Agencies or School Districts

The proposed regulations do not impose mandates on local agencies or school districts. Permit applications submitted to the Board are assessed on the project type, not the type of applicant.

Fiscal Impacts

Pursuant to Government Code Section 11346.5 (a)(6), the Board has prepared an Economic and Fiscal Impact Analysis of Proposed Amendments to CCR Title 23, Division 1, Chapter 1 (EIA). Based upon the analysis and supporting information in the EIA, the Board makes the following determinations:

- the cost or savings to any state agency,
- the cost to local agencies or school districts that are required to be reimbursed,
- other nondiscretionary costs or savings imposed on local agencies, and
- the costs or savings in federal funding to the state.

Costs to Local Agencies or School Districts that are Required to be Reimbursed:

The Board has determined that the proposed rulemaking would not create costs or mandates to any local agency or school districts that are required to be reimbursed.

Costs or Savings to Any State Agency:

The Board has determined that the proposed rulemaking would not create costs or savings to any state agency.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies:

The Board has determined that the proposed rulemaking would not create nondiscretionary costs or savings imposed on local agencies.

Costs or Savings in Federal Funding to the State:

The Board has determined that the proposed rulemaking would not create costs or savings in federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

The proposed rulemaking will only be imposed within the geographic area of the Board's jurisdiction in the Central Valley and will not be an adverse economic impact statewide. The Board has determined that the proposed rulemaking will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)

The Board determined that the proposed regulations would not significantly affect the following:

- *The creation or elimination of jobs within the State of California.* The proposed rulemaking revises technical standards that govern the design and construction of flood control facilities and encroachments, which impact the flood control works and floodways within the Board's jurisdiction and is not anticipated to create or eliminate any jobs.
- *The creation of new business or elimination of existing business within California.* No new businesses are anticipated to be created nor are any existing businesses anticipated to be eliminated due to the proposed rulemaking.
- *The expansion of businesses currently doing business within the state.* The proposed rulemaking revises technical standards that govern the design and construction of flood control facilities and encroachments, which impact the flood control works and floodways within the Board's jurisdiction. The individuals and businesses that are seeking to build a project encroaching upon the State-federal flood control system are already subject to the Board's existing regulations and, as such, the proposed rulemaking is not anticipated to have an effect on the expansion of businesses currently doing business within the State.

Anticipated benefits of the proposed rulemaking include the increased safety and welfare of California residents, businesses, property and public and private infrastructure. The proposed rulemaking further enables the Board to continue carrying out its mission to reduce the risk of catastrophic flooding to people and property within the California Central Valley.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The proposed rulemaking applies to private individuals and businesses conducting activities or seeking to encroach on the flood control facilities within the Board's jurisdiction and are technical in nature. It does not implement any new permitting or inspection related fees beyond

what is currently required for new permit applications, or existing encroachments requiring updated permits. Depending on the nature of the encroachment, an applicant may be required to undertake additional measures to ensure that the encroachment will not be injurious to the flood control system, which may result in increased project costs to the permit applicant. While the Board does not anticipate any increased direct costs to any particular permit applicant as a result of the proposed rulemaking, there is the potential for an increase in the number of applicants overall required to obtain a permit from the Board as a result of the proposed rulemaking. Due to the potential in-ground pools and wells have to negatively impact flood control facilities, the proposed rulemaking would increase the set-back distance for in-ground pools and wells from flood control facilities. The increased set-back for pools and wells, depending upon the depth of excavation, will potentially require individuals or businesses to obtain a permit for their respective in-ground pool or well, which under the Board's current regulations may not be required to obtain a permit and is discussed in further detail in the EIA.

BUSINESS REPORT

The proposed fee regulation does not require a report from the businesses it impacts.

EFFECTS ON SMALL BUSINESSES

The proposed rulemaking is a technical update and is not anticipated to result in any direct costs to small businesses applying for encroachment permits from the Board except as discussed above and discussed in further detail in the EIA.

EFFECTS ON HOUSING COSTS

The Board determined that the proposed rulemaking would not have a significant effect on housing costs. The proposed rulemaking does not result in any additional permit or inspection fees imposed on dwellings that are not already required when seeking a permit to or receiving an encroachment permit from the Board.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Board invites interested parties to submit statements or arguments with respect to alternatives to the proposed regulatory action during the written comment period, or if a hearing is requested, at the scheduled hearing.

AVAILABILITY OF STATEMENTS & DOCUMENTATION

The Board will make available the following documents which can be accessed online at <http://cvfpb.ca.gov/>

- Express Terms;
- Initial Statement of Reasons;
- All the information upon which the proposed rulemaking is based;
- The full text of any modified regulations that are nonsubstantial or sufficiently related in nature to the original text, made available for at least 15 days prior to the Board's adoption/repeal/amendment of the resulting regulation;

- Final Statement of Reasons (when prepared).

Inquiries regarding the proposed action should be directed to the Contact Person listed below. This agency representative will, upon request, make the express terms, documentation, and public records related to the proposed action available.

CONTACT PERSON

Written comments and questions concerning the proposed regulations may be sent to:

Name: Jit S. Dua
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Sacramento, California, 95821
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